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9
10 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. AC-2007-07

13 **CLETE DAVID MADDEN**
6617 Shadow Crest Drive
14 Plano, TX 75093

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

15 Certified Public Accountant
Certificate No. 83993

16 Respondent.

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
19 proceeding that the following matters are true:

20 PARTIES

21 1. Carol Sigmann ("Complainant") is the Executive Officer of the California
22 Board of Accountancy. Complainant brought this action solely in her official capacity and is
23 represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California,
24 by Geoffrey S. Allen, Deputy Attorney General.

25 2. Clete David Madden ("Respondent") is represented in this proceeding by
26 attorney Samuel J. Winer, whose address is Foley & Lardner, LLP, 3000 K Street, N.W., Suite
27 500, Washington, D.C. 20007-5143.

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3. On or about August 20, 2002, the California Board of Accountancy, Department of Consumer Affairs ("Board"), issued Certified Public Accountant Certificate Number 83993 ("Certificate") to Clete David Madden ("Respondent"). The Certificate expired on June 30, 2004.

JURISDICTION

4. Accusation No. AC-2007-07 (“Accusation”) was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on December 18, 2006. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of the Accusation is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in the Accusation. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License and Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. The parties acknowledge that the basis for the Accusation's alleged violations of California Business and Professions Code section 5100, subdivisions (h) and (l), is the Order entered by the United States Securities and Exchange Commission ("SEC" or

"Commission") on March 30, 2006, in its case *In the Matter of Clete D. Madden, CPA*, Respondent (Administrative Proceeding File 3-12252) (see paragraph 6 of the Accusation). Respondent herein, Clete Madden, without admitting or denying the findings of the SEC Order, except as to the Commission's jurisdiction over him and the subject matter of the Commission's proceedings, consented, effective March 30, 2006, to the entry of an *Order Instituting Public Administrative Proceedings Pursuant to Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions ("Order")*.

9. Respondent understands that the charges and allegations in the Accusation, if proven at a hearing, constitute cause for imposing discipline upon his Certificate.

10. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation and that those charges constitute cause for discipline. Respondent hereby gives up his right to contest that cause for discipline exists based on those charges.

11. Respondent hereby surrenders his Certificate for the Board's formal acceptance.

12. Respondent understands that by signing this stipulation he enables the Board to accept the surrender of his Certificate without further process.

13. Respondent acknowledges that the reasonable costs of investigation and prosecution in this matter are \$3,414.10.

RESERVATION

14. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Board or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

15. The parties understand and agree that facsimile copies of this Stipulated Surrender of License and Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

16. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED that Certified Public Accountant Certificate Number 83993, issued to Respondent Clete David Madden is surrendered and accepted by the California Board of Accountancy.

17. The surrender of Respondent's Certificate and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

18. Respondent shall lose all rights and privileges as a Certified Public Accountant in California as of the effective date of the Board's Decision and Order.

19. Respondent shall cause to be delivered to the Board both his wall and pocket license certificate on or before the effective date of the Decision and Order.

20. Respondent understands and agrees that if he ever applies for licensure or petitions for reinstatement in the State of California, the Board shall treat it as a new application for licensure. Respondent must comply with all the laws, regulations and procedures for licensure in effect at the time the application or petition is filed, and all of the charges and allegations contained in the Accusation shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the application or petition.

21. Respondent further understands and agrees that if he ever applies for re-
 licensure or reinstatement of his license in the State of California, he may be required to comply
 with any condition that the Board may impose on his license including but not limited to payment
 of \$3,414.10 in reasonable costs of the investigation and prosecution of this matter.

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1 ACCEPTANCE

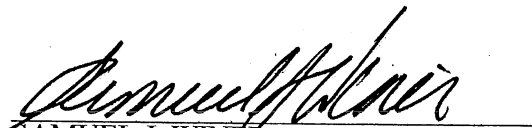
2 I have carefully read the above Stipulated Surrender of License and Order and
3 have fully discussed it with my attorney, Samuel J. Winer. I understand the stipulation and the
4 effect it will have on my Certified Public Accountant Certificate. I enter into this Stipulated
5 Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound
6 by the Decision and Order of the California Board of Accountancy.

7 DATED: 6.19.07

8 
9 CLETE DAVID MADDEN
10 Respondent

11 I have read and fully discussed with Respondent Clete David Madden the terms
12 and conditions and other matters contained in this Stipulated Surrender of License and Order. I
13 approve its form and content.

14 DATED: June 29, 2007

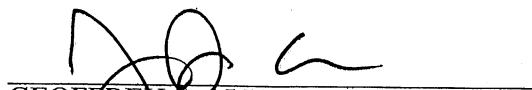
15 
16 SAMUEL J. WINER
17 Attorney for Respondent

18 ENDORSEMENT

19 The foregoing Stipulated Surrender of License and Order is hereby respectfully
20 submitted for consideration by the California Board of Accountancy.

21 DATED: 7/12/07

22
23 EDMUND G. BROWN JR., Attorney General
24 of the State of California

25 
26 GEOFFREY S. ALLEN
27 Deputy Attorney General
28 Attorneys for Complainant

**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. AC-2007-07

CLETE DAVID MADDEN
6617 Shadow Crest Drive
Plano, TX 75093

Certified Public Accountant
Certificate No. 83993

Respondent.

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the California Board of Accountancy, as its Decision in this matter.

This Decision shall become effective on November 3, 2007.

It is so ORDERED October 4, 2007.



FOR THE CALIFORNIA BOARD OF ACCOUNTANCY

ORIGINAL

BILL LOCKYER, Attorney General
of the State of California
ARTHUR D. TAGGART
Lead Supervising Deputy Attorney General
GEOFFREY S. ALLEN, State Bar No. 193338
Deputy Attorney General
California Department of Justice
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Attorneys for Complainant

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CALIFORNIA BOARD OF ACCOUNTANCY
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In the Matter of the Accusation Against:

Case No. AC-2007-07

CLETE DAVID MADDEN
6617 Shadow Crest Drive
Plano TX 75093
Certified Public Accountant Certificate No.
83993

ACCUSATION

Respondent.

Complainant alleges:

PARTIES

1. Carol Sigmann (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs.

2. On or about August 20, 2002, the California Board of Accountancy, Department of Consumer Affairs (Board), issued Certified Public Accountant Certificate Number 83993 (Certificate) to Clete David Madden (Respondent). The Certificate expired on June 30, 2004.

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JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 5100 states:

After notice and hearing the board may revoke, suspend, or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

.....

(h) Suspension or revocation of the right to practice before any governmental body or agency.

.....

(l) The imposition of any discipline, penalty, or sanction on a registered public accounting firm or any associated person of such firm, or both, or on any other holder of a permit, certificate, license, or other authority to practice in this state, by the Public Company Accounting Oversight Board or the United States Securities and Exchange Commission, or their designees under the Sarbanes-Oxley Act of 2002 or other federal legislation.

5. Section 5107(a) of the Code states:

The executive officer of the board may request the administrative law judge, as part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate found to have committed a violation or violations of this chapter to pay to the board all reasonable costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees. The board shall not recover costs incurred at the administrative hearing.

FACTS

6. On or about March 30, 2006, the United States Securities and Exchange Commission (SEC) issued an Order Instituting Public Administrative Proceedings Pursuant To Rule 102(e) Of The Commissions's Rules Of Practice, Making Findings, And Imposing Remedial Sanction. The SEC proceedings arose out of the failed audit of Tenet Healthcare Corporations's (Tenet) fiscal year (FY) 2002 financial statements and after-the-fact modifications to the working papers that created the false impression that the audit had been adequately performed. Respondent, who was the KPMG partner in charge of the Tenet audit engagement,

1 failed to complete the audit and then participated in and directed the after-the-fact modifications.
2 [A senior manager on the Tenet audit engagement shares responsibility for these actions].

3 7. In August 2002, Respondent released an audit report containing an
4 unqualified opinion stating that KPMG had performed the audit in accordance with Generally
5 Accepted Auditing Standards (GAAS). When the audit report was released, however,
6 Respondent [and the senior manager] knew, or reasonably should have known, that several
7 procedures in critical audit areas had not been completed. Tenet included the audit report in its
8 FY 2002 Form 10-K, which failed to disclose that Tenet's substantial earnings growth was driven
9 by an aggressive pricing strategy designed to trigger an increase in outlier payments, a
10 component of Medical revenue. Many of the unfinished audit procedures concerned outlier
11 revenue even though Respondent had identified Tenet's disclosure deficiency in this area.

12 8. In October 2002, an industry analyst discovered that Tenet was exploiting
13 the Medicare program through its aggressive pricing strategy. The publication of the analyst's
14 reports in late October 2002 contributed to a 47% loss (more than \$11 billion) in Tenet's market
15 capitalization. Government investigators, including SEC staff, began looking at Tenet, its
16 strategy, and its Medicare outlier revenue. In November 2002, the Tenet audit team, led by
17 Respondent [and the senior account manager], began modifying the working papers from the FY
18 2002 audit, despite public knowledge of the analyst's report, the dramatic decrease in Tenet's
19 market value, and the pending government investigations. More than 350 working papers were
20 modified and nine of the ten references to outlier payments in the working papers were added in
21 November and December of 2002. Almost none of these improper modifications provided any
22 indication that they had been made more than three months after the issuance of the FY 2002
23 audit report. After spending more than 500 hours modifying the working papers in late 2002, the
24 audit team went on to make further improper changes to the FY 2002 working papers after
25 receiving an SEC subpoena in July 2003. The net effect of the improper, after-the-fact
26 modifications is that the working papers inaccurately reflect (1) that the Tenet audit was
27 complete when the audit report was issued, and (2) that Respondent had sufficiently considered
28 Tenet's outlier revenue growth and determined that Tenet did not need to disclose that trend.

1 9. The failure to timely complete the FY 2002 Tenet audit and the after-the-
2 fact modification of the working papers violated GAAS.

3 FIRST CAUSE FOR DISCIPLINE

4 (Suspension or Revocation of Right to Practice before any Governmental Agency or Body)

5 10. Respondent is subject to disciplinary action under Section 5100, subd (h)
6 in that Respondent's right to practice before the United States Securities and Exchange
7 Commission has been suspended or revoked. The circumstances are as follows:

8 11. On or about March 30, 2006, the United States Securities and Exchange
9 Commission issued an Order Instituting Public Administrative Proceedings Pursuant To Rule
10 102(e) Of The Commissions's Rules Of Practice, Making Findings, And Imposing Remedial
11 Sanction. The Order suspended or revoked Respondent's right to practice before the United
12 States Securities and Exchange Commission.

13 SECOND CAUSE FOR DISCIPLINE

14 (Imposition of Discipline, Penalty, or Sanction under the
15 Sarbanes-Oxley Act of 2002 or other federal legislation)

16 12. Respondent is subject to disciplinary action under Section 5100, subd (l)
17 in that Respondent has been disciplined, penalized, or sanctioned under the Sarbanes-Oxley Act
18 of 2002 or other federal legislation. The circumstances are as follows:

19 13. On or about March 30, 2006, the United States Securities and Exchange
20 Commission issued an Order Instituting Public Administrative Proceedings Pursuant To Rule
21 102(e) Of The Commissions's Rules Of Practice, Making Findings, And Imposing Remedial
22 Sanction. The Order disciplined, penalized, or sanctioned Respondent under the Sarbanes-Oxley
23 Act of 2002 or other federal legislation.

24 PRAYER

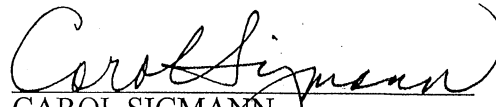
25 WHEREFORE, Complainant requests that a hearing be held on the matters herein
26 alleged, and that following the hearing, the Board issue a decision:

27 1. Revoking or suspending or otherwise imposing discipline upon Certified
28 Public Accountant Certificate Number 83993 issued to CLETE DAVID MADDEN;

1 2. Ordering CLETE DAVID MADDEN to pay the Board the reasonable
2 costs of the investigation and enforcement of this case, pursuant to Business and Professions
3 Code section 5107; and,

4 3. Taking such other and further action as deemed necessary and proper.

5 DATED: December 5, 2006

6 
7 CAROL SIGMANN
8 Executive Officer
9 California Board of Accountancy
10 Department of Consumer Affairs
11 State of California
12 Complainant

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